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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,392	04/12/2004	Robert A. Gutstein	1150-103.US	2896
7590	05/02/2006		EXAMINER ALAVI, ALI	
Colin P. Abrahams Suite 400 5850 Canoga Avenue Woodland Hills, CA 91367			ART UNIT 2875	PAPER NUMBER

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/822,392	Applicant(s) GUTSTEIN ET AL.	
	Examiner Ali Alavi	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-9,11-13,15-22,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-9,11-13,15-22,24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### DETAILED ACTION

Applicant's correspondence filed on 9/30/04 has been entered. Accordingly, claims 3, 4, 10, 14, 23, and 26 have been canceled. Claims 1-2, 5-9, 11-13, 16-22, and 24-25 are pending in this application

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 5-9, 11-13, 15-22, and 24-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6,719,443. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant application claims are broader in scope and the only difference is audio signal vs. audio sound.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 8, 11, 13, 15, 17, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson (U. S. Pat. No 4,510,556).

Regarding claim 1, and 21 Johnson discloses an electronic apparatus for simulating a flame including: at least two light sources (14, 16, 18, fig. 1), an integrating circuit electrically (20) connected to the light sources for intermittently illuminating at least one of the light sources independently of other light sources such that the light sources together provide the effect of a flickering movement (col. 2, lines 1-10), a power source for providing power to the integrated circuit (6V, fig. 2).

Regarding claim 7, Johnson discloses the claimed invention as applied above in claim 1, and further discloses that the integrated circuit illuminates light sources in a random operation (see col. 1, lines 35-40).

Regarding claim 8, Johnson discloses the claimed invention as applied above in claim 1, and further discloses that the integrated circuit illuminates the light sources in a predetermined operation (see abstract, lines 7-10).

Regarding claim 11, Johnson discloses the claimed invention as applied above in claim 1, and further discloses a body in the shape of a candle in which the flame simulator is contained (12, fig. 2), the body having an upper end with a mounting means

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for receiving the integrated circuit and light sources and a chamber therein for receiving the power source (see fig. 2).

Regarding claim 13, Johnson discloses the claimed invention as applied above in claim 1, and further discloses the power source comprises at least one battery received within the chamber (6V, fig. 2)

Regarding claim 15, Johnson discloses the claimed invention as applied above in claim 1, and further discloses all of the light sources are intermittently illuminated (col. 2, lines 1-10).

Regarding claim 17, Johnson discloses the claimed invention as applied above in claim 1, and further discloses an electronic circuit generating at least one of random pulses (col. 2, lines 27-30).

Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Chliwnyj et al (U. S. Pat. No 5,924,784).

Chliwnyj et al disclose a microprocessor based simulated electronic flame including a plurality of solid state type light sources (fig. 1, 7a-7e), an integrated circuit electrically connected to the light sources for intermittently illuminating at the light source such that the light source provides the effect of a flickering movement (see fig. 1, and abstract), a power source for providing power to the integrated circuit (a power source is inherently required to supply power to an electronic device).

Claims 1, 11, 15, 17, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Blackerby (US Pat. No 4,844,580).

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Regarding claim 1, 11, 15, and 21 Blacerby discloses an electronic apparatus for simulating a flame including: at least two light sources (46, 48, fig. 4), an integrating circuit electrically (fig. 2) connected to the light sources for intermittently illuminating at least one of the light sources independently of other light sources such that the light sources together provide the effect of a flickering movement (abstract), a power source for providing power to the integrated circuit (20,22, fig. 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, and 18 are rejected under U.S.C. 103(a) as being unpatentable over Johnson (U. S. Pat. No 4,510,556).

Regarding claim 2, Johnson discloses the claimed invention except for the four light sources. However, Johnson shows three light sources (12, 14, 16). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use four light sources since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. V. Bemis Co.*, 193 USPQ.

Regarding claim 18, Johnson discloses the claimed invention except for the LEDs. The examiner takes Official Notice that the use of LEDs is old and well known in

the illumination art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute an LED for the light source in the system of Johnson. One would have been motivated since LEDs are recognized in the illumination art to have many desirable advantages, including reduced size, high efficiency, low power consumption, long life, resistance to vibrations, and low heat production, over other light sources.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (U. S. Pat. No 4,510,556) in view of Mantle et al (US Pat. No 6,102,548).

Regarding claim 9 , Johnson discloses the claimed invention except for the light sensor. Mantle et al discloses a light system for a mailbox including a light sensor (56, fig. 3, col. 3, lines 19-20): It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate a light sensor to Johnson lighting device in which activates the light only when insufficient ambient light is available as taught by Mantle.

Claims 12, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson (U. S. Pat. No 4,510,556) in view of Chien (US Pat. No 6,280,053).

Regarding claims 12 and 20 Johnson discloses the claimed invention except for the electrical connectors for connecting to the power source to an external power member. Chien discloses a multiple function electro-luminescent night light device having a pair of prongs to plug the nightlight to an external outlet/ power member.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the light device of Johnson by incorporating an external cord or a pair of plug to the lighting device in order to have an alternate in case of power failure as taught by Chien.

***Allowable Subject Matter***

Claims 5, 6, 16, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 5 and 6 are objected to because in part recite "...further comprising a microphone connected to the integrated circuit wherein the microphone inputs pre-selected audio signals which are processed by the integrated circuit to which the flame simulator between and on position, an off position and an on-timed position where the flame simulator will remain activated for a predetermined length of time." Claim 16 is objected to because in part recites "...a body in the shape of a fire log in which the flame simulator is contained, the body having a receiving means with a mounting means for receiving the integrated circuit and light sources and a chamber therein for receiving the power source." Claim 19 is objected to because in part recites "...wherein the integrated circuit is mounted on a flexible base which can be shaped so as to conform to the shape of at least a portion of the candle to conserve space." The prior art of record failed to show or reasonably suggest the limitations as set forth in dependent claims, in such manner that a rejection under 35 U.S.C. 102 or 103 would be proper.



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***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. P. J. Kayatt (US Pat. No 3,435,268).

Any inquiry concerning this communication or earlier communication from the examiner should be directed to **Ali Alavi** whose telephone number is **(571) 272-2365**. The examiner can normally be reached between 7:00 A.M. to 5:30 P.M. Tuesday to Friday. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Sandy O'Shea can be reached at (571) 272-2378 or you may fax your inquiry to the **Central Fax at (571) 273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**ALI ALAVI**  
**PRIMARY EXAMINER**